

In The Matter Of:
United States vs.
PFC Bradley E. Manning

Vol. 16
July 9, 2013
UNOFFICIAL DRAFT - 7/9/13 Morning Session

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VOLUME XVI

IN THE UNITED STATES ARMY

UNITED STATES

VS.

MANNING, Bradley E., PFC COURT-MARTIAL

U.S. Army, xxx-xx-9504

Headquarters and Headquarters Company,

U.S. Army Garrison,

Joint Base Myer-Henderson Hall,

Fort Myer, VA 22211

_____ /

The Hearing in the above-entitled matter was

continued on Tuesday, July 9, 2013, at 10:00 a.m., at

Fort Meade, Maryland, before the Honorable Colonel

Denise Lind, Judge.

DISCLAIMER

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1 APPEARANCES:

2
3 ON BEHALF OF GOVERNMENT:

4 MAJOR ASHDEN FEIN

5 CAPTAIN JOSEPH MORROW

6 CAPTAIN ANGEL OVERGAARD

7 CAPTAIN HUNTER WHYTE

8 CAPTAIN ALEXANDER von ELTEN

9
10 ON BEHALF OF ACCUSED:

11 DAVID COOMBS

12 CAPTAIN JOSHUA TOOMAN

13 MAJOR THOMAS HURLEY

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1 PROCEEDINGS

2 THE COURT: Court is called to order.

3 CAPTAIN MORROW: Your Honor, since the Court
4 last recessed everyone is present, as far as the media
5 and public access, Your Honor, as of 10:00 a.m. this
6 morning there are 12 members of the Media Operation
7 center, one stenographer, 26 spectators in the
8 courtroom and no spectators in the overflow trailer,
9 though it's available.

10 THE COURT: All right. Thank you. Have we
11 had any additional exhibits that we need to address --

12 (Video technical Issues.)

13 CAPTAIN MORROW: Resume your seat.

14 DIRECT EXAMINATION

15 BY CAPTAIN MORROW:

16 Q. I'll remind you, you are under oath.

17 A. Yes.

18 Q. Sir, I would like to talk about what you did
19 in this case now. Let's discuss your review of the
20 Detainee Assessment Briefs, the DABs.

21 A. Okay.

1 Q. Did you review all 779 DABs for this case?

2 A. I did not.

3 Q. Did you believe that you reviewed the
4 majority of the DABs during your time as the Chief
5 Prosecutor?

6 A. No.

7 Q. What DABs did you review in this case?

8 A. I reviewed a total after five, I believe, the
9 government listed in the chart.

10 Q. And in addition to just the DABs that you
11 just reviewed for this case, when you were the chief
12 prosecutor, how many of the DABs do you think you might
13 have seen during your time?

14 A. It's hard to say if there's a document that
15 didn't particularly stand out. I would say somewhere
16 between 50 and 100. I can tell you, these five are not
17 ones that I reviewed.

18 Four of the five had been released from
19 Guantanamo before I became Chief Prosecutor. The fifth
20 one is currently on the to be transferred list, was
21 never on our scope as a potential prosecution, so I

1 wasn't familiar with any of those five before.

2 Q. Did you compare -- again, the five DABs you
3 reviewed in this case, they were the DABs charged in
4 Specification 9, charge 2?

5 A. Correct.

6 Q. Did you compare the information within the
7 five charged DABs with Open Source Information?

8 A. Yes, I did.

9 Q. And what Open Source Information in general
10 did you use?

11 A. There's information that the DoD published on
12 its FOIA site.

13 (Technical Video Issues)

14 Administrative review board materials.

15 Also some of the individuals that are named in the DABs
16 for parties to habeas litigation, several documents
17 that were made publicly available as part of the habeas
18 process. There were also materials, either
19 publications or movies publicly available on some of
20 the individuals as well.

21 Also, the Guantanamo Review Task Force

1 report and the Executive Summary that was prepared in
2 conjunction with that.

3 Q. Let's discuss each of those sources in turn.
4 What information did you review from the 2006-2007 FOIA
5 releases by the Pentagon?

6 A. It would have been the CSRT information and
7 the ARB -- CSRT information on the five individuals.

8 THE COURT: What is CSRT?

9 THE WITNESS: I'm sorry. It is the Combatant
10 Status Review Tribunal. They were created in 2004.
11 It's supposed to be the functional equivalent of a
12 Geneva Convention Article 3 tribunal to determine the
13 individual is an enemy combatant subject to detention.

14 Q. And did you also review the ARBs, the
15 Administrative Review Boards?

16 A. Yes.

17 Q. And what are the ARBs?

18 A. The ARB comes after the -- the CSRT is a one
19 time process, shortly after their arrival to determine,
20 it's a three-officer panel that makes a determination
21 that the person is, in fact, designated enemy combatant

1 and subject to detention.

2 After that annually the individual
3 receives an Administrative Review Board, a similar
4 process where panel officers again review the
5 information to assess whether the individual is still
6 an ongoing intelligence value or risk and whether
7 continued detention is warranted. Again, that process
8 started after 2004.

9 Q. Are the names and the country --

10 (Technical Video Issues)

11 A. -- serial numbers ISNs, country of origin,
12 date of birth. Made available by the DoD.

13 Q. And when was that?

14 A. I believe that was 2006.

15 Q. Did you verify the information that was
16 released by the Pentagon in 2006 with the ARBs to see
17 if it matched?

18 A. Yes.

19 Q. Let's go back to the CSRTs for a moment.
20 When were they established?

21 A. 2004. It was in response to the habeas

1 litigation that was taking place. It was created by
2 order of Secretary of Defense. Again, it was -- the
3 Bush Administration made the decision, Geneva
4 Convention -- so this was a process that's created
5 similar to Article 3, Geneva Convention Tribunal.

6 (Video Technical Issues)

7 Q. What are Administrative Review Boards?

8 A. It's a similar process. There's an agency,
9 Office of administrative review of detainee -- drawing
10 a blank. Administrative agency that handles the
11 administrative processes at Guantanamo, both the CSRTs
12 and the ARBs.

13 The ARB was a similar process, three
14 officer panel. The individual was allowed to attend
15 and make a statement. And it was really, I guess, the
16 equivalent like a parole hearing where there was an
17 assessment of whether the person still warranted
18 detention as an enemy combatant.

19 And as for the vast majority of
20 detainees over time, there were a total 779 men that we
21 were told were the worst of the worst, and we are

1 taking Guantanamo down to 166 now. So more than about
2 80 percent of the people that ever went to Guantanamo
3 at Guantanamo, vast majority were ones that were
4 released through the ARB process.

5 Q. How often did you have for a particular
6 detainee was there an ARB?

7 A. Once a year they had a review.

8 Q. Now with regards to the five detainees, did
9 you find ARBs for them?

10 A. I don't believe so. I think three of the
11 five were released in 2004, which would have been in
12 the time the CSRT process was initiated. The fourth
13 individual was released in early 2005. The other
14 individual has had administrative, is still at
15 Guantanamo, he's on the list to be transferred out. So
16 he would have had an Administrative Review Board.

17 Q. With regards to the CSRTs and ARBs, how did
18 you compare the CSRTs and ARBs with the DABs?

19 A. By taking the DAB and then going line by line
20 from it and then going to the CSRT, the ARB to see if
21 the same information was available.

1 Q. And what process did you use in order to
2 memorialize when you found something that was identical
3 to CSRT with a DAB?

4 A. I took a highlighter and highlighted that
5 list.

6 Q. So both the CSRT and ARBs and the DAB?

7 A. Correct.

8 Q. What information -- now, let's talk about
9 court filings. What information did you review in
10 court filings?

11 A. Again, a number of detainees have been
12 involved in habeas litigation. In these particular
13 individuals, there's one in particular that led to one
14 of the first Supreme Court decisions, Guantanamo
15 detainees.

16 There's a voluminous record in Supreme
17 Court decision to name one of these individuals on it.
18 So there were public filings from those proceedings
19 that are available.

20 Q. Did you compare the public filings and the
21 court filings with the DABs?

1 A. Yes.

2 Q. How did you do this?

3 A. Again, it was looking at the substantive
4 information and going through the Open Source Material
5 to see if the same or similar information was available
6 there and highlighting of it.

7 Q. And when you did that, did you highlight both
8 the court filings and the DAB?

9 A. Yes.

10 Q. Let's talk about other Open Source
11 Information. You referenced there were a number of
12 public released documents -- I believe you said a movie
13 and other items.

14 What items in general did you review?

15 A. Some of these individuals were very
16 well-known internationally and have had documentary,
17 broadcast on public television -- Great Britain is
18 available, here in the U.S. as well. There have been
19 articles and public interviews that they have done.
20 There is a book about them.

21 The other individuals, again, there are

1 different articles and public information about the --
2 the other two weren't as widely known as the other
3 three. But there is public information on them as
4 well.

5 Q. Let's talk about the book that you found.
6 What was the name of the book? Is that the Guantanamo
7 Files?

8 A. The movie is the Road to Guantanamo. The
9 book is the Guantanamo Files.

10 Q. Do you recall when the book came out?

11 A. I believe it was 2009. I'm not sure.

12 Q. What about the movie?

13 A. It was around the same timeframe.

14 Q. With regards to the book, how many of the
15 detainees did the book cover?

16 A. Three.

17 Q. And what about the book, not the movie?

18 A. I believe the book was the same three. There
19 would be a narrative passage and quotations from at
20 least two of the three where they discuss the
21 narrative. It's about 130 pages, as I recall.

1 Q. Okay. Now what process did you use, when you
2 were looking at the Open Source Information, like the
3 book and the articles, to compare it with the DABs?

4 A. It was the same process. Looking at
5 substantive information and seeing if it was replicated
6 in open source material. I couldn't do that with the
7 movie. But again, a lot of information was repetitive.
8 Open Source Information is in print and comparable.

9 Q. How did the Open Source Information, based
10 upon your review, how did the Open Source Information
11 that you reviewed, the information released by the
12 Pentagon, the publications, the book, movie and the
13 court filings, how did that compare, in general, with
14 the database?

15 A. I think if you didn't read the DAB, you could
16 look at the Open Source Information that the Department
17 of Defense has provided, this thing provided through
18 the court judicial process and public media.

19 If you studied that material, you could
20 sit down and write what would be a substantially
21 verbatim version of the DAB. In an Article 32

1 proceeding, you could summarize the testimony and
2 replicate and summarize the equivalent of the DAB.

3 Q. What I want to do now is show you a few
4 documents. This has been marked Defense Exhibit tango
5 for identification.

6 Do you recognize what would be marked as
7 defense tango for identification?

8 A. Yes, I do.

9 Q. And, in general, what is it?

10 A. It's a detainee assessment brief on one of
11 the five charged DABs, the individual that was released
12 from Guantanamo January 2005.

13 Q. How do you recognize it?

14 A. I sat down with you, May 25th-26th of this
15 year. This is the document that was highlighted. It
16 discusses information here and cross referenced it to
17 the public source information.

18 Q. Is this document in the same or substantially
19 the same condition as when you last saw it?

20 A. Yes, it is.

21 Q. Does it contain the highlighted portions that

1 you made based upon your review of the Open Source
2 Information?

3 A. Yes. The markings on here are markings I
4 made.

5 Q. Has it changed in any way since you have last
6 seen it?

7 A. It has an evidence stamp. Other than that
8 the substance is exactly the same.

9 MR. COOMBS: I'll offer that into evidence.

10 THE COURT: Any objection?

11 CAPTAIN MORROW: No objection.

12 THE COURT: It's admitted.

13 BY MR. COOMBS:

14 Q. Now I'm handing the witness what would be
15 marked as an Defense Exhibit Uniform for
16 identification. Do you recognize Defense Exhibit for
17 identification?

18 A. Yes, I do.

19 Q. What is it?

20 A. It is (inaudible) form, detainee of the five
21 who is still at Guantanamo on the list to be

1 transferred out.

2 Q. Does this document contain highlights?

3 A. Yes.

4 Q. Who made those highlights?

5 A. I did.

6 Q. Has this document changed in any way since
7 you have last seen it?

8 A. Again, the exception of the evidence stamp on
9 it, no.

10 MR. COOMBS: What has been marked for
11 identification. Offer it into evidence?

12 THE COURT: Any objection?

13 CAPTAIN MORROW: No objection.

14 THE COURT: Exhibit Uniform for
15 identification is admitted.

16 BY MR. COOMBS:

17 Q. Handing the witness what would be marked as
18 Defense Exhibit Victor. Do you recognize this
19 identification?

20 A. Yes.

21 Q. How do you recognize it?

1 A. It's a detainee assessment form on the other
2 three individuals, the one that the Supreme Court
3 decision I referenced earlier.

4 Q. If you would, just turn each of those --
5 there should be a total of three --

6 A. Yes. The first one is the individual --

7 Q. Do you see two other detainees there?

8 A. Yes.

9 Q. Now I want to talk to you about your
10 highlights in each of these exhibits.

11 A. Okay.

12 Q. With regards to each of these exhibits, the
13 information you highlighted, was that information that
14 you found verbatim in an open source material? This
15 applies to all of the DABs that you reviewed.

16 A. My recollection is that it was lifted from
17 the open source material.

18 Q. So verbatim?

19 A. Yes.

20 Q. And regards to the non-highlighted
21 information, how significant, in your opinion, is the

1 non-highlighted information?

2 A. I would say it's insignificant. If you watch
3 the movie, if you read the book, if you look at the
4 other talks these individuals have given, the
5 interviews of these articles, you would know more about
6 them than you would reading the Detainee Assessment
7 Briefing.

8 Q. With regards to Defense Exhibit Victor for
9 identification, the three detainees, the information
10 that you have from each of the three detainees, did
11 that match, did each detainee tell the exact same
12 story?

13 A. They were consistent and similar. Don't know
14 that exactly each one is verbatim.

15 Q. And not saying where it came from, but would
16 you have expected their story to be the same based upon
17 the circumstances of their capture?

18 A. Yes. They followed the identical act to get
19 to where they were picked up and ended up at
20 Guantanamo. Each individual experienced essentially
21 the same chain of events.

1 Q. From your perspective, the fact that the
2 stories don't match, what does that tell you?

3 A. That normally tells me, other than they were
4 prepared probably by different individuals. It wasn't
5 a cut-and-paste from one to the next.

6 Q. What do you mean by that?

7 A. That the detainee assessment briefs, as we
8 discussed yesterday, was collecting of the law
9 enforcement intelligence and other bits of information
10 and trying to distill it into a narrative description
11 of the individual.

12 Again, I don't know who specifically
13 wrote the report. It would appear that they weren't
14 all three written by the same individual. Just did a
15 cut-and-paste from one to the next.

16 Q. Now with regards to the non-highlighted
17 information in Defense Exhibit Victor, and in the other
18 defense exhibits, how significant is the
19 non-highlighted information from your perspective?

20 A. It's insignificant.

21 Q. And why is that?

1 A. Again, it's just part of the narrative
2 discussion, as far as providing any intelligence or
3 sources and methods or any other considered sensitive
4 information that discussed that. It's just background
5 information on the individual.

6 MR. COOMBS: Defense Exhibit Victor and offer
7 it into evidence.

8 CAPTAIN MORROW: No objection.

9 THE COURT: Defense Exhibit Victor for
10 identification is admitted.

11 BY MR. COOMBS:

12 Q. Do you believe, in your opinion, that the
13 highlighted information that you found in open source
14 could be used to harm the United States?

15 A. No.

16 Q. And why is that?

17 A. It's general. It doesn't discuss sources,
18 methods. The underlying documents, the law enforcement
19 interviews, the intelligence interviews, the other, you
20 know, information on sources and methods and how
21 information was acquired that would have potential

1 value to the enemy and training to resist those
2 techniques and those types of collection methods.

3 But here it's just a general discussion.
4 Like I said, we described them as baseball cards.
5 Because it was the general, you know, who this
6 individual is kind of information.

7 Q. And would that opinion apply equally to the
8 un-highlighted portions of each of these documents?

9 A. Yes. Again, it's a narrative discussion of
10 the individual and kind who is John Smith type
11 description of the individual.

12 Q. I now want to ask you about the Guantanamo
13 Review Task Force Report. Did you review this report?

14 A. Yes.

15 Q. And when was this report completed?

16 A. It was actually completed in December of
17 2009. President Obama commissioned it on January 22nd,
18 2009. It gave a one year window to complete their
19 work. It was actually completed in December 2009. The
20 release was delayed because of the Christmas Day
21 Underwear Bomber and his connections to Libya and

1 potentially to al-Qaida. And so it was finally
2 publicly released on January 22 of 2010.

3 Q. Was it ever actually publicly released?

4 A. Yes.

5 Q. And when was that?

6 A. I don't recall. Sometime shortly thereafter.

7 Q. Showing you what has been previously shown to
8 the Government, Defense Exhibit Sierra for
9 identification.

10 Do you recognize that document?

11 A. Yes, I do.

12 Q. And what is that document?

13 A. It's the final report of the Guantanamo
14 Review Task Force dated January 22, 2010.

15 Q. Was this report completed pursuant to an
16 Executive Order by President Obama?

17 A. Yes, on January 22, 2009.

18 Q. And did the Executive Order call for an
19 investigation of the status of individuals held at
20 Guantanamo Bay?

21 A. Yes. It was in conjunction with the order

1 the president signed the same day to close Guantanamo
2 Bay within one year.

3 Q. What was the overall-purpose of this
4 investigation?

5 A. The purpose was, as I mentioned yesterday, I
6 met with transition team in late November, early
7 December of 2008, and explained to them that I think
8 the notion that they had that there were neat fold away
9 file cabinets that were tabbed with files on each
10 detainee was a fiction.

11 It was information scattered and
12 arriving different agencies and organizations, getting
13 a complete picture on each detainee was not the simple
14 task that I think they came into this process thinking
15 it was going to be.

16 The Task Force appears to be the
17 President directing them to go out to the agencies and
18 collect out the information to try to make an
19 independent assessment of each detainee and recommended
20 disposition.

21 By this point in time -- when I became

1 Chief Prosecutor in 2005, there were more than 500
2 detainees at Guantanamo. By the time the President
3 signed the order in January of 2009, the population was
4 down to at least 242.

5 So it was looking at those
6 individuals -- I think that is how they reported a
7 percentage, 240 and one committed suicide and another
8 had been transferred. So 240 men were at Guantanamo.
9 It was an assessment whether they should be continued
10 in indefinite detention, transferred back to another
11 country or referred for prosecution in the four
12 military commissions or Federal Court.

13 Q. Did the Executive Order that President Obama
14 signed order the investigation for every individual
15 still held at Guantanamo?

16 A. Yes.

17 Q. And with regards to that investigation, what
18 agencies, in general, from your memory, participated in
19 the investigation?

20 A. It was essentially every agency that had an
21 interest in Guantanamo detainees. The typical ones you

1 think of DoD, Justice, CIA, FBI, NSA, the normal
2 agencies you would expect to have a vested interest in
3 the disposition of the detainees at Guantanamo.

4 Q. Is Defense Exhibit Sierra for identification
5 the complete report by the Guantanamo Task Force?

6 A. Yes.

7 Q. Has that been changed or altered any way?

8 A. Not to my knowledge.

9 CAPTAIN MORROW: Objection, Your Honor. I've
10 let this go on for a little bit. Colonel Davis
11 testified yesterday that he was not part of the
12 Guantanamo Review Task Force. He's not involved in the
13 preparation of the report, any of its findings, any of
14 the research done, production of the report. So we
15 object on all those grounds.

16 THE COURT: Are you trying to authenticate
17 the report?

18 MR. COOMBS: Yes, Your Honor. And Colonel
19 Davis is a person with knowledge. And the basis of the
20 knowledge is the fact that United States Government
21 commissioned the report and then publicly released the

1 report.

2 And he pulled it from the publicly
3 released documents of the United States Government.

4 So it is the Defense's position that
5 this would be authenticated under MRA901B1, and, in
6 addition under MRA90B7. Being evidence of a public
7 record or report.

8 CAPTAIN MORROW: Your Honor, if I may ask
9 some additional questions.

10 THE COURT: Go ahead.

11 BY CAPTAIN MORROW:

12 Q. Colonel Davis, did you personally pull this
13 report?

14 A. Not what is sitting in front of me. It's
15 available on the internet. I have looked at it.

16 Q. Was this report provided to you as part of
17 your preparation for this case by Mr. Coombs?

18 A. The paper copy, yes. And it was part of what
19 I considered rendering my opinion on the five charged
20 DAB's.

21 MR. COOMBS: And just in response to that.

1 Was I the first one to ever show you?

2 A. No. I had an interest in this obviously well
3 before May of 2013. So I looked at it a number of
4 times.

5 THE COURT: Your objection is relevance.
6 Since it's going for authentication, I'm going to
7 overrule that.

8 CAPTAIN MORROW: It would be authentication
9 as well as. The relevance piece is going to come later
10 when he talks about specific paragraph in here.

11 THE COURT: Why would it not be relevant to
12 authentication under 901B7?

13 CAPTAIN MORROW: Again, Your Honor, our
14 position is that Colonel Davis did not pull this
15 report.

16 THE COURT: So is it the Government's
17 position this is not an official Government report?

18 CAPTAIN MORROW: No, Your Honor, no.

19 THE COURT: Overruled.

20 MR. COOMBS: Your Honor, Defense moves to
21 admit what has been marked Defense Exhibit Sierra into

1 evidence.

2 CAPTAIN MORROW: Our objection would be
3 relevance.

4 THE COURT: Is this a document you used in
5 your comparison?

6 THE WITNESS: No. It doesn't contain a
7 narrative discussion of particular detainees.

8 THE COURT: What is the relevance?

9 MR. COOMBS: He considered the document not
10 in making comparison for highlighting, but this
11 document falls into his overall opinion as to whether
12 or not the DABs could cause damage to the United States
13 based upon the review of this document.

14 CAPTAIN MORROW: I can shorten this, Your
15 Honor. I believe they -- refer to Paragraph 9 talks
16 about threat assessments.

17 THE WITNESS: Page 9.

18 CAPTAIN MORROW: Page 9. It is unclear,
19 first of all, what the Guantanamo Review Task Force is
20 referring to. They don't talk about specific detainee
21 assessments. Again --

1 THE COURT: Government objection is
2 overruled. I'm going to admit it.

3 BY MR. COOMBS:

4 Q. Colonel Davis, how did you use this report?

5 A. Well, again, as a report I was familiar with
6 from having reviewed a number of times before we
7 actually met. The report confirmed my belief about the
8 assessment of detainee population in general.

9 Assessments in some cases are accurate.
10 In some cases are grossly overstated and in a few cases
11 understated.

12 So just looking at an assessment, if you
13 don't know what you are looking at is right or wrong,
14 or overstated or understatement. It is underlying
15 documents, which is what this group, they went out to
16 all the agencies and inspected, collated the documents
17 on each detainee and compared it to the existing
18 assessment of the detainee and found that in many
19 instances the assessments were wrong.

20 So they came up with their own
21 independent assessment of each detainee.

1 There's a matrix, publicly available,
2 that lists 240 detainees that were living at the time
3 the report came out. And this group's recommendation
4 on the disposition of each of those detainees.

5 Of the five charged DABs, only one of
6 the five that is still at Guantanamo. He's included in
7 the matrix and is recommended for transfer to a country
8 that is classified.

9 Q. With regards to the Guantanamo Review Task
10 Force, did they consider other things besides the DABs?

11 A. Yes. They went out to all the agencies
12 requesting the information on each of the detainees
13 that were at Guantanamo for them to do their
14 assessment.

15 Again, it's not an exact science. Just
16 last month the agency got an additional photograph and
17 shared -- that has been in our custody for 11 years.
18 We just found we had this information in the records.

19 So what they asked for was all the
20 information in Government agencies possession for them
21 to do their own independent review.

1 Again, had to be a unanimous conclusion
2 of the group. That was chaired by Matt Olson, Justice
3 Department, now the Director of the National
4 Counterterrorism Center. And it led to the matrix of
5 the disposition of the 240 detainees.

6 Q. Did the Guantanamo Review Task Force indicate
7 the volume of information that they considered?

8 A. It does. It's a substantial number. I don't
9 recall exactly the number of documents and pages, but
10 it was thousands and thousands of documents and tens of
11 thousands of pages of information that they considered.

12 Q. And with regards to everything they
13 considered, did the DABs play a prominent role in the
14 report?

15 A. Again, their assessment was that the Detainee
16 Assessments were, again, some were accurate, some were
17 overstated, some were understated, and in some cases
18 that the assessment wasn't supported by -- underlying
19 documents are the important documents. And they found
20 in some cases the underlying documents didn't support
21 the narrative of the assessment.

1 Q. Did you reach any conclusions in this case
2 concerning whether the charged DABs could reasonably be
3 expected to cause damage to the national security of
4 the United States?

5 A. Yes. My opinion is, again, you could go to
6 open source and write a substantially verbatim
7 equivalent that would be at least as accurate, if not
8 more accurate, than the detainee assessment was.

9 Q. Based upon that, what is your conclusion?

10 A. Other than causing embarrassment to the
11 country that it was released, I don't see the enemy
12 could gain anything of value from reading the detainee
13 assessment.

14 As I said, no use to us on the
15 prosecution side. We could go to the DoD, FOIA side
16 and get better and more complete information from the
17 CSRTs and ARBs and court filings.

18 Again, if you are trying to again some
19 kind of strategic tactical advantage, the detainee
20 assessment brief is not the place to get it.

21 MR. COOMBS: Thank you.

1 THE COURT: Cross examination.

2 CROSS EXAMINATION

3 BY CAPTAIN MORROW:

4 Q. I would like to start and then, if I could,
5 break at a certain point to review some of the Defense
6 exhibits since this is the first time the Government
7 has had the information.

8 MR. COOMBS: We don't have any objection.
9 All of the underlying documents were provided and based
10 on discovery to the Government.

11 THE COURT: Okay.

12 BY CAPTAIN MORROW:

13 Q. Colonel Davis, good morning. I want to start
14 by talking about your work on this case. As part of
15 this case, Mr. Coombs called you up in 2012,
16 approximately, to talk about being a witness?

17 A. Yes.

18 Q. He asked for your opinion at that time on
19 Detainee Assessments?

20 A. Correct.

21 Q. And then later on or so, May of this year,

1 2013, you met with Mr. Coombs?

2 A. Correct.

3 Q. And he came to your office for a meeting?

4 A. No. I came here to Fort Meade.

5 Q. And to prepare for your testimony at this
6 point you all met and he came with a binder of open
7 source materials?

8 A. Correct.

9 Q. And you sat down in front of these materials?

10 A. I did.

11 Q. And these materials included some habeas
12 files?

13 A. Yes.

14 Q. Relating to a couple of these detainees?

15 A. Correct.

16 Q. He sent you some links to a DoD site or a
17 FOIA site, or something like that?

18 A. Over the course of time the information from
19 the public domain, either in Pdfs or links to the
20 information I reviewed prior to coming to Fort Meade in
21 May of this year.

1 Q. So he sent you some emails essentially
2 saying, hey, look at this, look at this?

3 A. Right.

4 Q. And you reviewed statements made by some of
5 the detainees?

6 A. Correct.

7 Q. These were not Government documents?

8 A. No.

9 Q. It was a book published by some of the
10 detainees?

11 A. Uh-huh.

12 Q. Other statements like Wikipedia sources --
13 did you know where they were from?

14 A. Yes. The ones that were links, obviously,
15 was a link to the -- revealed the source. The
16 majority, I believe, were Pdf files and predominantly
17 Government.

18 Q. With respect to documents you reviewed that
19 were, that as far as you could tell, published by the
20 Government?

21 A. Yes.

1 Q. And provided to you by Mr. Coombs?

2 A. Correct.

3 Q. We are only talking about sort of a small
4 world event; we are talking about CSRT documentation?

5 A. Correct.

6 Q. We are talking about ARB documentation?

7 A. Correct.

8 Q. And we are talking about habeas filings?

9 A. Correct.

10 Q. That's really the world of Government
11 documents that you reviewed as part of this case?

12 A. That's correct.

13 Q. And you said during direct testimony that all
14 five detainees had CSRT paperwork?

15 A. Yes.

16 Q. Is that correct?

17 A. Yes. Well, I'm not sure about the three
18 because they were released in 2004, which is when the
19 CSRT process was initiated.

20 Q. So really it wasn't all five CSRTs. It was
21 really only two of the five?

1 A. Yes.

2 Q. And so same thing applies with the ARBs.

3 ARBs, the Administrative Review Boards come after the
4 CSRTs. There was no ARB documents relating to three of
5 the detainees?

6 A. Correct.

7 Q. So with respect to three of the detainees,
8 all you reviewed were non-governmental materials.

9 A. Correct.

10 Q. And you said that you reviewed a movie as
11 well?

12 A. Yes.

13 Q. And that movie was Road to Guantanamo?

14 A. Correct.

15 Q. And the Road to Guantanamo was kind of like,
16 sort of a docu-drama?

17 A. Yes.

18 Q. And it's got documentary aspects to it and
19 it's got dramatic aspects to it like actors re-acting
20 scenes?

21 A. Exactly, yes.

1 Q. Other than the links that you were provided
2 by Mr. Coombs, you really didn't pull these materials
3 yourself?

4 A. No.

5 Q. They were provided to you?

6 A. Correct.

7 Q. And so you had sort of a binder of open
8 source materials, which included non-governmental open
9 source materials, right, stuff you could just pull off
10 the internet?

11 A. Yes.

12 Q. And some government documents that you sort
13 of recognized based on your experience at GITMO --
14 CSRTs, ARBs, that sort of thing?

15 A. Well, I didn't sort of recognize them. I did
16 recognize them.

17 Q. Sorry. Okay. I meant sort of because you
18 weren't part of the CSRT or ARB process?

19 A. No, I was not.

20 Q. So you sat down. You had the binder there.
21 And you had the charge documents next to the binder?

1 A. Yes.

2 Q. And these charge documents were the Detainee
3 Assessments?

4 A. Yes.

5 Q. Five of them?

6 A. Correct.

7 Q. And this is the first time you had seen the
8 Detainee Assessments in approximately 7 years?

9 A. A little less. I left the military --

10 Q. Six years?

11 A. Yes.

12 Q. And you did not work with Detainee
13 Assessments after you left your job at the OMC?

14 A. That's correct.

15 Q. And you have not worked with classified
16 material from Guantanamo since you left?

17 A. Correct.

18 Q. And we kind of covered this yesterday, but I
19 did want to go back over it. When you were at GITMO
20 you would see Detainee Assessments as part of the case
21 files you would review?

1 A. Yes.

2 Q. And these case files were, I believe you said
3 sometimes they were put together by the prosecution
4 teams, sometimes they were put together with help from
5 CITF, which was Criminal Investigation Task Force?

6 A. CITF would have done the preliminary work
7 before it ever got to one of the prosecutors. It would
8 have been a case CITF would have worked out and come to
9 the prosecution saying this was a potential candidate
10 for military commission.

11 Q. You somewhat kind of semi-finished or -- no
12 lawyer is ever going to rely on a law enforcement
13 person to give them a complete case file, but you had
14 some kind of case file put together by law enforcement?

15 A. Yes.

16 Q. And that then included the Detainee
17 Assessments?

18 A. Again, I don't know the CITF protocol on how
19 they assembled case files. The case appeared to be a
20 case that had potential for prosecution. And one of
21 the attorneys that worked for me would be assigned to

1 the case and would meet with CITF and help them
2 prepare, you know, work up the class. So whether the
3 agent would come to our office with an accordion folder
4 and say here's --

5 Q. That's not really what I was asking for.
6 Most of the time -- I believe you testified that most
7 of the case files came to you, and the reason you had
8 experience with Detainee Assessments is because those
9 Detainee Assessments were part of the case file?

10 A. Yes.

11 Q. And these case files also contained all the
12 intelligence reporting that contributed to Detainee
13 Assessments?

14 A. I wouldn't say "all".

15 Q. Substantial amount of intelligence reporting?

16 A. Yes.

17 Q. That contributed to the Detainee Assessments?

18 A. Again, a variety of intelligence law
19 enforcement, intercepts, other avenues of collecting
20 information. Certainly the intelligence avenue was one
21 avenue.

1 Q. Okay. Classified material, maybe that's
2 better, that started in a bunch of reports, that then
3 led to a summary or, executive summary or however you
4 want to categorize it, which was in a Detainee
5 Assessments?

6 A. Yes. Correct.

7 Q. And the Detainee Assessments, I believe you
8 told me, might be the distillation of hundreds of pages
9 of sensitive material?

10 A. Yes.

11 Q. And these Detainee Assessments were meant for
12 senior officials and other administrative processes.
13 They were signed by the JTF GITMO Commander, but the
14 memorandum was for --

15 A. Southern Command.

16 Q. After that it was sort of like a broader
17 overview of what we know about this detainee?

18 A. Yes.

19 Q. And you were not part of that distillation
20 process?

21 A. No. Other than, again, the high value

1 detainees. The general detainee population, I was not
2 involved in that process.

3 Q. So you were not part of the process, at least
4 with respect to most of the detainees, to turn hundred
5 of pages of classified information into executive
6 summary?

7 A. Correct.

8 Q. So you went through the printed materials
9 provided to you by Mr. Coombs. Now going back to
10 May 2013. You go through the printed materials
11 provided you by Mr. Coombs, which included narratives
12 from some of the detainees, statements that they have
13 made to media, movies, books, other things found on the
14 web?

15 A. That's correct.

16 Q. And you compared them to the Detainee
17 Assessments?

18 A. Correct.

19 Q. And then you highlighted the Detainee
20 Assessments?

21 A. Correct.

1 Q. And you would highlight the Detainee
2 Assessments, if you found it really as the source
3 provided to you by the --

4 A. Yes.

5 Q. That might include a movie?

6 A. Yes.

7 Q. That might include a book?

8 A. Yes.

9 Q. That might include statements that
10 contributed to a book?

11 A. Yes.

12 Q. That might include Government stuff?

13 A. Correct.

14 Q. CSRTs, ARBs?

15 A. Correct.

16 Q. But not with respect to at least three of the
17 detainees. There was no Government stuff.

18 A. Correct.

19 Q. Maybe other than their name?

20 A. Right.

21 Q. And so you did the comparison?

1 A. I did.

2 Q. And you highlight something, when you saw in
3 the Detainee Assessments, when you saw something that
4 looked similar to the printed materials?

5 A. Correct.

6 Q. Not verbatim necessarily?

7 A. Right.

8 Q. Similar?

9 A. Right.

10 Q. And did you then also highlight the source
11 from which you were pulling that information?

12 A. Yes.

13 Q. You did. So you highlighted both the
14 Detainee Assessments?

15 A. Yes.

16 Q. And you said, okay, I have seen this in this
17 open source material?

18 A. Yeah. The binders are tabbed each page where
19 I found something in the open source materials and
20 highlighted.

21 Q. Now, did you note on the Detainee

1 Assessments -- so defense exhibits -- where you found
2 that material in the open source?

3 A. No.

4 Q. So it's not written down?

5 A. Right.

6 Q. Okay. Is there any other sourcing outside of
7 the tabs binders where you could go back and look and
8 say, hey, I know exactly where I found that
9 information?

10 A. No.

11 Q. And when you were highlighting in the printed
12 or in the Detainee Assessments, how were you
13 differentiating between things that were just opened by
14 open source stuff on the internet and stuff you saw in
15 movies from stuff you saw in habeas filings, CSRT
16 documents, ARBs?

17 A. I didn't differentiate government versus
18 public in marking the documents.

19 Q. Okay.

20 I want to talk about baseball cards. So
21 you'll have to bear with me for a moment. Let's go

1 through a baseball card?

2 A. All right.

3 Q. So you have seen baseball cards in your
4 youth?

5 A. Wished I had kept them.

6 Q. They have the baseball players name?

7 A. Right.

8 Q. Has a picture of the player?

9 A. Right.

10 Q. Has a position?

11 A. Right.

12 Q. Has a team?

13 A. Correct.

14 Q. Has a height and weight?

15 A. Yes.

16 Q. When they were born?

17 A. Right.

18 Q. And some batting average and other
19 statistics?

20 A. Right.

21 Q. Right. It probably has when the player

1 entered the Major Leagues?

2 A. Yes.

3 Q. Where they played in the Minor Leagues?

4 A. Yes.

5 Q. And sometimes it might have a factoid, so it
6 might have, you know, Frank Robinson led the AL in
7 batting, home runs, runs scored, in 1966?

8 A. Correct.

9 Q. And he was named for 8 balls starts?

10 A. Yes.

11 Q. So let's go through the Detainee Assessments.

12 A. Okay.

13 Q. They have the detainee's name?

14 A. Yes. And all of the aliases.

15 Q. Right. Aliases?

16 A. Right.

17 Q. And actually sometimes these detainees use
18 different names?

19 A. Correct.

20 Q. And, in fact, in some of the Detainee
21 Assessments that you were reviewed there were a list of

1 aliases?

2 A. Correct.

3 Q. And those aliases weren't necessarily public
4 information?

5 A. Correct.

6 Q. So they had the detainee's name?

7 A. Yes.

8 Q. When they were born?

9 A. Yes.

10 Q. If they could determine when they were born?

11 A. Yes. Some were estimates.

12 Q. Right. Circumstances of their capture?

13 A. Yes.

14 Q. Where they were captured?

15 A. Yes.

16 Q. Who they are captured with?

17 A. Yes.

18 Q. Sometimes?

19 A. Yes.

20 Q. So kind of like their teammates?

21 A. Right.

1 Q. Now, do baseball cards list all the players'
2 teammates?

3 A. No. Again, I didn't coin the term baseball
4 card.

5 Q. I know. It was something that was used at
6 GITMO?

7 A. Yes.

8 Q. Now the Detainee Assessments listed country
9 of origin?

10 A. Yes.

11 Q. And they listed affiliations with known
12 terrorist organizations around the United States.

13 A. Yes.

14 Q. If there was an affiliation?

15 A. Yes.

16 Q. Would you call that sort of like what team
17 they played for?

18 A. Yes.

19 Q. And it sort of identified what years they
20 played for that team, right? Sort of like a baseball
21 card?

1 A. Yes.

2 Q. And did it talk about individuals they
3 associated with prior to joining their current team?

4 A. Yes. In some --

5 Q. In some cases.

6 A. Yes.

7 Q. And it in substance listed specific
8 factoids -- sometimes.

9 A. Yes.

10 Q. Like this guy received training in this camp
11 and was picked for this mission?

12 A. Yes.

13 Q. Right?

14 A. Yes.

15 Q. That would be kind of like you were picked
16 for an All Star Team -- maybe?

17 A. Yes.

18 Q. And these assessments were called -- they
19 were called assessments?

20 A. Right. Yes.

21 Q. And baseball cards don't really assess a

1 player, do they?

2 A. No.

3 Q. Baseball cards don't have scouting reports?

4 A. No.

5 Q. They don't say stuff like, you know, Casey
6 Rose Scout, this guy can't hit anything, up in the
7 zone, can't get around on a fastball. They don't say
8 stuff like that?

9 A. Correct.

10 Q. But in some cases, and in the cases where,
11 even in this case, these detainees contain scouting
12 reports?

13 A. Yes.

14 Q. Now after going through that, I mean in
15 contrast, do you see why baseball cards -- and I know
16 it's not your analogy, but something you used. It's
17 kind of that analogy, right?

18 A. It's not an exact fit.

19 Q. In context it is sort of different, right?

20 A. Yes.

21 Q. And these detainee Assessments they

1 characterize a detainee?

2 A. Yes.

3 Q. They sometimes weigh the detainee's word
4 against other sources of information?

5 A. Yes.

6 Q. And some of the early ones did contain
7 pinpoint sites to sources, but each assessment carried
8 a classification?

9 A. Yes.

10 Q. And at the bottom of the document was a basis
11 for classification. What I mean by that is, it said,
12 derived from. And then it said, colon, multiple
13 sources?

14 A. Right.

15 Q. And in your experience what does multiple
16 sources refer?

17 A. Again, intelligence, law enforcement, signal
18 interception, looking at ways information might come
19 into Government's possession.

20 Q. Other classified information?

21 A. Yes.

1 Q. That would include intelligence reporting?

2 A. Yes.

3 Q. Sigit?

4 A. Yes.

5 Q. Human?

6 A. Yes.

7 Q. Information from interrogation of detainees?

8 A. Yes.

9 Q. Information from the interrogation of other
10 detainees?

11 A. Yes.

12 Q. Now, you said that the Detainee Assessments
13 weren't really that useful for you. Is that correct?

14 A. That's correct.

15 Q. In some cases they were inaccurate?

16 A. Yes.

17 Q. I'm speaking specifically to '05-'07?

18 A. Yes.

19 Q. The ones you reviewed sometimes you found by
20 looking at the raw reporting that they were somewhat
21 inaccurate or maybe even violated --

1 A. Yes.

2 Q. Sometimes they were on the mark?

3 A. Yes.

4 Q. Because, as you said, intelligence at least
5 the time was classified.

6 A. Yes.

7 Q. And in some cases, and this is actually
8 confirmed by the Guantanamo Review Task Force that
9 understate the case on the detainee, right?

10 A. Yes. I can't recall seeing one where that
11 was the case. Obviously they did. Because they
12 mentioned it in their report.

13 Q. Right. But these Detainee Assessments
14 weren't prepared for the prosecution team?

15 A. Correct.

16 Q. They were prepared, again, for senior
17 officials, senior military officials and other
18 executive branch officials?

19 A. Correct.

20 Q. And you didn't think the assessments were
21 that useful because, as a prosecutor, you really wanted

1 to see the raw information?

2 A. Correct.

3 Q. The raw evidence?

4 A. Correct.

5 Q. And that evidence was also in the case file
6 that was brought to you or that you reviewed at GITMO?

7 A. Correct. I think the only official use I
8 would have ever made of the DABs, we had an opportunity
9 to concur or not concur on every detainee that is
10 proposed for transfer out. The majority of those were
11 ones that weren't on our scope for potential
12 prosecution.

13 So at times before I would sign off on a
14 transfer, I would look at the DAB just to get an idea
15 who this individual was.

16 Q. Okay. And you wanted to see the raw
17 intelligence because the prosecution's interest weren't
18 necessarily aligned with the intelligence community's?
19 Is that correct?

20 A. Often diametrically opposed.

21 Q. And that's because the intelligence community

1 sometimes balks at the declassification of information?

2 A. Sometimes is probably an understatement.

3 Q. But that's because intelligence professionals
4 are more forwardly, right?

5 A. Yes.

6 Q. They are looking at sort of the future?

7 A. Yes.

8 Q. And, as prosecutors, we are looking to sort
9 of close cases, right?

10 A. Yes. We are more of retrospective.

11 Q. Now you are familiar with the Executive Order
12 on classified national security --

13 A. Yes. At least as they exist. I don't know
14 if there has been a subsequent --

15 Q. So I guess in your time period it would have
16 been 12958? Does that sound right?

17 A. There was an order in existence.

18 Q. That order was in existence at the time you
19 were in the military, you were somewhat familiar with
20 that Executive Order?

21 A. Right. I don't know if it has been

1 superceded since then.

2 Q. I'm going to read you the definition of
3 secret information. So secret shall be applied to
4 information in all probable disclosure with which
5 reasonably could be expected to cause serious damage to
6 the national security.

7 Now you have rendered an opinion in this
8 case, but you have never rendered an opinion of whether
9 someone could reasonably be expected to cause harm or
10 damage to national security before today?

11 A. Other than in discussions and trying to get
12 information declassified on whether it should have ever
13 been classified.

14 Q. Well, you were making a case no (Inaudible)

15 A. Right.

16 Q. And you have never rendered an opinion before
17 today on whether disclosure of classified information
18 would be potentially damaging to the U.S. or
19 potentially useful to any enemy of the United States?

20 A. Again, only in the course (Inaudible)

21 Q. And you have never worked as an intelligence

1 analyst?

2 A. Never have.

3 Q. And you have never been classification
4 authority?

5 A. No.

6 Q. Sir, I want to talk to you about intelligence
7 gaps. Are you familiar with the concept of
8 intelligence gaps?

9 A. No.

10 Q. Well, let me ask you this question. Are you
11 familiar with the general concept that part of the
12 intelligence analysis is a recognition of what we don't
13 have?

14 A. Yes.

15 Q. What we hope to learn in the future?

16 A. Correct.

17 Q. And that would be -- you could probably
18 characterize that as assessment --

19 MR. COOMBS: Your Honor, relevance and beyond
20 the scope.

21 THE COURT: What is the relevance?

1 CAPTAIN MORROW: Relevance, Your Honor, is
2 that the Government's contention, based on the
3 stipulation of expected testimony, (inaudible). Those
4 are all characterized as intelligence gaps.

5 THE COURT: All right. I'm going to overrule
6 the objection. Go ahead.

7 BY CAPTAIN MORROW:

8 Q. I can have you look at them, but the
9 assessments you reviewed, did they contain info like
10 that?

11 A. I don't recall info like that.

12 Q. Okay. Let's pull them out. Let's start with
13 Defense Exhibit 10. I'm handing you Defense Exhibit
14 Tango. I would like you to look at sort of the last
15 two paragraphs there. Actually, the last page.

16 THE COURT: Wait just a moment.

17 (Pause)

18 BY CAPTAIN MORROW:

19 Q. After reading that would you say there are at
20 least, you can identify some information in there where
21 we are acknowledging that we think we know some more

1 stuff about this?

2 A. Assessment have considerable information.

3 Q. And that stuff is not highlighted. You did
4 not highlight that?

5 A. I did not.

6 Q. Actually, hand it back to the witness.

7 A. All right.

8 Q. With respect to that exhibit, you weren't --
9 at least that particular detainee had CSRT information
10 available to you as part of your review?

11 A. Yes.

12 Q. That would have been one of the assessments
13 where you were actually looking at government
14 information and comparing it to the assessment and
15 saying they were somewhat similar?

16 A. Yes. But it also says he's a candidate for
17 prosecution and was released before I ever -- in 2005.

18 Q. I didn't ask that. But, again, I can ask you
19 this question. Would you agree that not every person
20 released or transferred from Guantanamo was assessed
21 even according to the GRCF as somebody who was not a

1 threat, that there were some people set for release
2 because we felt like we could mitigate the threat?

3 A. Correct.

4 Q. By working with the country?

5 A. Correct.

6 Q. In the confines of our law enforcement and
7 our intelligence capabilities, right?

8 A. Correct.

9 Q. It wasn't black and white, A, here you go.
10 We were totally wrong on this guy. It was a policy,
11 policy determination, right?

12 A. I don't know what -- these four of the five
13 were released before I became the Chief Prosecutor. So
14 I don't know what the diplomatic negotiations were.

15 Q. Okay. Let's grab Defense's Exhibit Victor.

16 Hand the witness Defense Victor. That's
17 the three assessments that were grouped together?

18 A. Correct.

19 Q. And would you agree that very little is
20 highlighted in there?

21 A. Yes.

1 Q. Almost nothing, other than maybe a name and
2 where they were captured.

3 A. Yes.

4 Q. And at least with respect to Defense Exhibit
5 Victor, those highlights were based on really one of
6 two things; the detainee's name and ISN, released by
7 the Government, right?

8 A. And the country of origin.

9 Q. And the only other thing that might be
10 highlighted in there came from open source materials
11 not released by the Government, right, like
12 statements --

13 A. Correct.

14 Q. Or movie?

15 A. Yes.

16 Q. Okay. I won't ask you to go through this
17 entire thing. sir.

18 A. All right.

19 Q. Sir, would you agree that you highlighted a
20 lot in there. You highlighted the name, obviously?

21 A. Yes.

1 Q. There are some aliases there that were not
2 highlighted?

3 A. Yes.

4 Q. There was a lot of highlighting in the areas
5 of capture information?

6 A. Yes.

7 Q. Right. Stuff that would have been like ARB
8 or CSRT?

9 A. Correct.

10 Q. And it may say -- you highlighted affiliated
11 with al-Qaida?

12 A. Right.

13 Q. But in the paragraph, assessment paragraph,
14 towards the end, there's nothing highlighted there,
15 right?

16 A. Paragraph A is the detainee intelligence
17 value assessment. There is nothing -- there is minimal
18 highlighting.

19 Q. Okay. And this is the person that has been
20 determined by the GRCF as someone that they are
21 planning to transfer to, out of GITMO?

1 A. Have fully assessed at high risk here.

2 Q. I didn't ask that.

3 A. Yes, he's on the current transfer list.

4 Q. Right. Again, current transfer list, the
5 decision by individuals that somebody should be
6 transferred is not necessarily always related to
7 whether we still think that they operationally involved
8 in al-Qaida, whether they have ties, right? It's a
9 policy determination?

10 A. I would assume in some instances it is a
11 policy determination.

12 Q. You can't speak necessarily to this person or
13 why that decision was made, why the review panel made
14 that decision, right?

15 A. The only thing I can say for my personal
16 involvement is, he was not a candidate that we had on
17 our list for potential prosecution.

18 Q. Okay. But potential prosecution cases --
19 there was data of that as well?

20 A. Correct.

21 Q. Defense's Exhibit Uniform. Now you said at

1 least with respect to Victor the three people grouped
2 together, you said that the accounts were somewhat
3 different, right?

4 A. Yes.

5 Q. Somewhat different account, or at least the
6 assessment had a somewhat different account of those
7 individuals and the travel --

8 A. Correct.

9 Q. Now, as a lawyer, would you agree that
10 witnesses sometimes have different recollections of
11 things?

12 A. Yes.

13 Q. And that's not to say -- that's part of the
14 process, right?

15 A. Yes.

16 Q. Sort of seeking the truth through that
17 process?

18 A. Right.

19 Q. And those recollections or those different
20 summaries of what the, you know, the circumstances of
21 capture, et cetera, that may be due to sources telling

1 different people different things, right?

2 A. Yes.

3 Q. In some cases. You can't speak necessarily
4 to these three?

5 A. Right.

6 Q. In some cases that could be a reason?

7 A. Correct. Generally the primary source is the
8 individual. They sure have different accounts of the
9 same event based on individual perspective of that
10 event.

11 Q. And the primary source is the individual and
12 they are all saying something different. We know they
13 were all captured together. Would that be a good sign
14 or bad sign?

15 A. Obviously their accounts differ than, you
16 know, can't determine just on the documents which one
17 is right or wrong.

18 Q. Right. One moment, sir.

19 A. Sure.

20 (Pause)

21 CAPTAIN MORROW: Thank you, sir.

1 REDIRECT EXAMINATION.

2 BY MR. COOMBS:

3 Q. Colonel Davis, I want to start off with the
4 baseball card analogy. You indicated that was an
5 analogy that was done by you. Is that correct?

6 A. No, it was a term that was in existence.
7 Which version I don't know.

8 Q. And is that analogy designed to compare a GAB
9 exactly to a baseball card or was that an analogy to
10 indicate a worth of the GAB?

11 A. I think it was an indication of his --
12 shorthand term that reflected his worth --

13 CAPTAIN MORROW: Objection. Speculation. He
14 just he wasn't the first one to coin the term.

15 THE COURT: Overruled.

16 BY MR. COOMBS:

17 Q. So was the term designed, especially when you
18 used it, and your predecessor, we'll leave that out,
19 was that baseball card analogy designed to indicate,
20 hey, this has the same information of a baseball card,
21 or this is the worth of the DAB?

1 A. I think it was a flippant shorthand term for
2 the Detainee Assessment.

3 Q. And in your opinion, again, the Detainee
4 Assessments -- what was the worth for you as a Chief
5 Prosecutor?

6 A. As far as preparing a case, it had no value.
7 Again, I said the only use I ever made was when I
8 coordinated on recommendations for release. If it was
9 an individual I wasn't familiar with, I might look at
10 DAB just to get a sense of who he was before I signed
11 off on the transfer.

12 Q. And you talked about, both on direct and
13 cross, about the various sources that you compared open
14 source material.

15 With regard to CSRTs and ARBs, do you
16 recall having situations where information that you saw
17 actually in the CSRT matched verbatim, word-for-word
18 what you saw in the DABs?

19 A. I believe it did in the one we discussed
20 earlier.

21 Q. And from your memory and was this a small

1 sentence or passage?

2 A. I believe it was just a sentence or two.

3 Q. And did you also find information in the ARBs
4 that matched verbatim what was in the DABs?

5 A. I don't recall.

6 Q. With regards to the three detainees where
7 there was not a CSRT or ARBs, because they were
8 released before that process started, in your
9 experience with the CSRTs and ARBs, would you have
10 expected to see more information highlighted in those
11 DABs had you had a CSRT or DAB?

12 A. Yes.

13 Q. And why is that?

14 A. Well, again, if you look at the ones -- the
15 other two were representative of the ability to collate
16 or correlate information from the Detainee Assessments
17 brief to the CSRT and DAB. You would expect the
18 information to be generally consistent from one to the
19 other.

20 Q. And you talked on cross about the three
21 different accounts to the Victor. And one of the

1 possibilities of those three different accounts was
2 maybe the people weren't telling the truth. Do you
3 remember that question?

4 A. Yes.

5 Q. Is another one of the possibilities for the
6 differing accounts just how we obtained information on
7 detainees?

8 A. Yes.

9 Q. How did we obtain information from
10 individuals at Guantanamo?

11 A. You're talking about the methods?

12 Q. Not the methods. Just in general. How did
13 we get that information?

14 A. In the case of the three individuals it would
15 have been either law enforcement or intelligence or
16 perhaps together because often it was a joint effort,
17 sitting down with the individual and having a
18 discussion.

19 In the case of those three individuals
20 they all spoke English, so you didn't have the
21 intermediary. It was sometimes a problem where you had

1 a detainee that spoke a different language and there
2 were issues of the accuracy of the transaction. But
3 here they all spoke English.

4 Q. And the open source material from their
5 accounts, did these three individuals indicate that the
6 exchange between them and their interrogators was
7 always a polite, nice conversation?

8 A. No. It was clearly, from their view, harsh.

9 Q. And did these three individuals in the open
10 source material that you reviewed indicate that their
11 statements were by torture?

12 CAPTAIN MORROW: Objection.

13 THE COURT: We are getting a little far
14 afield.

15 MR. COOMBS: The prosecutor indicated that
16 the differing accounts were as a result, in his words,
17 sources that different people telling different things
18 could indicate reliability of the person.

19 Just simply providing that fact in this
20 instance Defense's position is that the differing
21 accounts from these three --

1 THE COURT: Okay. I understand. You have
2 gotten your point. We can move on.

3 BY MR. COOMBS:

4 Q. Very well. Now, with regards to the
5 information that you compared, you were asked several
6 questions about the open source material and where you
7 highlighted that and what you found in the accuracy of
8 these, correct?

9 A. Right.

10 MR. COOMBS: Now, Your Honor, before I mark
11 it, Defense, based upon the Government's cross, would
12 ask under MRA703, that the Court finds that the facts
13 or data that otherwise would normally be inadmissible,
14 the underlying supporting documents are, in fact,
15 admissible in this case due to the Government's cross.

16 We would direct the Court to the second
17 part of MRA703 that says, facts or data that are
18 otherwise inadmissible shall not be disclosed to the
19 members by the proponent of the opinion or inferences
20 unless the Military Judge determines that their
21 probative value in assisting members to evaluate the

1 expert's opinion substantially outweighs their
2 prejudicial effect.

3 We believe that, if the Court reviewed
4 the underlying documentation, many of which includes
5 government released information from CSRTs and ARBs,
6 the Court can do a direct comparison to the highlighted
7 tab portions within the open source and see verbatim,
8 word-for-word with what is in the DAB, highlighted and
9 what is in the open source material.

10 THE COURT: All right. Government.

11 CAPTAIN MORROW: The Government would like an
12 opportunity to review all the binders.

13 THE COURT: The government has not reviewed
14 the binders?

15 CAPTAIN MORROW: No, Your Honor.

16 MR. COOMBS: They should have it. It was
17 disclosed to them.

18 CAPTAIN MORROW: Reviewed what was
19 highlighted --

20 THE COURT: Is this the first time the
21 Government has seen highlights?

1 MR. COOMBS: I believe so. I guess.

2 THE COURT: Well, did you turn over a
3 highlighted copy to the Government or not?

4 MR. COOMBS: No, Your Honor. The Government
5 is aware of the fact he did this obviously. His cross
6 examination indicates that.

7 THE COURT: Okay. Before I admit anything,
8 I'm going to allow the Government to take a look at
9 what is admitted, what it is you are proposing to admit
10 with highlights.

11 CAPTAIN MORROW: (Inaudible)

12 THE COURT: Why not?

13 CAPTAIN MORROW: That analysis or that
14 determination is made by with respect to your
15 instruction released is something available, released
16 by the Government.

17 THE COURT: That's number 2. 1 says the
18 disclosure of material potentially damaging to the
19 United States or might be useful to an enemy of United
20 States. I have got determination to make as well,
21 right.

1 CAPTAIN MORROW: You do, Your Honor. There
2 actually has been a recent court case on that very
3 issue. But -- that's probably for another time.

4 THE COURT: You want me to consider it?

5 CAPTAIN MORROW: Your basis for admitting the
6 open source material is going to be that it leads to
7 potential damage to U.S., useful to enemy.

8 THE COURT: All right. Well, we are going to
9 take a recess anyway for you to look --

10 CAPTAIN MORROW: Yes. This was just
11 released --

12 THE COURT: Just released meaning, okay.

13 CAPTAIN MORROW: This morning.

14 THE COURT: May not be familiar with the
15 case. You want me to consider it, I will certainly
16 consider it.

17 CAPTAIN MORROW: Can I have one moment, Your
18 Honor.

19 (Pause)

20

21 Your Honor, we propose maybe taking an

1 early lunch to allow us to review the binders and
2 hopefully help get this opinion for the Court's
3 determination, if that's acceptable.

4 THE COURT: Well, it seems like a good plan
5 at this point. Any objection?

6 MR. COOMBS: No objection, Your Honor. And
7 I'll respond to the Government's closely held argument
8 after the break then.

9 THE COURT: Well, go ahead and respond to the
10 closely held argument now, if you can.

11 MR. COOMBS: The other aspect or wrinkle to
12 the instruction that the government didn't highlight
13 it, obviously the information also has been released
14 and the Government hasn't taken any steps to secure the
15 information nor protect the information.

16 And in this instance our argument would
17 be that the open source material, even not released by
18 the government, would also be relevant for the Court's
19 consideration and whether or not this information was
20 closely held because, when you compare that with the
21 CSRTs, the type of information that was released by the

1 Government for the CSRTs and ARBs after 2004, the open
2 source material for the three individuals that predates
3 that is identical in the type of information.

4 So the Defense's position would be that
5 still would impact on your closely held. And then
6 obviously on the second aspect.

7 THE COURT: Okay. Anything further?

8 CAPTAIN MORROW: We just note, Your Honor,
9 that closely held relates to information that is
10 something within the possession, custody and control of
11 government, that the Government does affirmatively
12 (inaudible)

13 THE COURT: Is there any case law that talks
14 about publicly released information that the
15 Government --

16 CAPTAIN MORROW: I have to look at the
17 instruction. I believe the case where that instruction
18 comes from is, I believe it's the Heine case. I would
19 have to look through my notes.

20 THE COURT: All right. I will take a look at
21 those cases as well. How long would like for lunch,

1 considering any other issues that need to be addressed
2 today? Do you want to confer?

3 CAPTAIN MORROW: Yes, Your Honor. 1315.

4 THE COURT: Any objection?

5 MR. COOMBS: No objection.

6 THE COURT: That's fine. Print me a copy of
7 the case we are talking about.

8 CAPTAIN MORROW: Yes, your Honor. If we can
9 get ahold of it.

10 THE COURT: You mean get ahold of it today?

11 CAPTAIN MORROW: Well, it had been released.
12 I'm not sure what form it's been released, whether it
13 is Westlaw or something.

14 THE COURT: What is the name of the case?

15 CAPTAIN MORROW: It's related to the
16 (inaudible)

17 THE COURT: It's in the D.C. Circuit.

18 CAPTAIN MORROW: I believe it is.

19 THE COURT: Circuit Court or district?

20 CAPTAIN MORROW: It might be in District
21 Court. It addresses essentially (inaudible)

1 THE COURT: Well, is there anything else we
2 need to address before we recess?

3 MR. FEIN: Just one administrative note.
4 From an email submitted about the motions. Received
5 notification that all four of the motions were posted
6 to the Army's website before this morning.

7 THE COURT: Anything else we need to address?

8 Court is in recessed until 1315.

9 (Court adjourned at 11:35 a.m.)

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